

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

ANTHONY L. BAGLEY,

Petitioner,

v.

ISIDRO BACA, et al.,

Respondents.

Case No. 3:13-cv-00138-MMD-WGC

ORDER

Petitioner Anthony L. Bagley filed a petition pursuant to 28 U.S.C. § 2254. The Court, noting this was not petitioner's first such petition, entered an order requiring petitioner to show cause why the action should not be dismissed as successive and filed without leave of the Ninth Circuit Court of Appeals, as required by 28 U.S.C. § 2244 (b)(3)(A). (Dkt. no. 6.) 28 U. S. C. §2244(b)(3)(A), requires petitioner to obtain leave from the Ninth Circuit Court of Appeals to present this claim to this Court in this second petition. Absent leave of the appellate court, the petition must be dismissed. *Id.*

Petitioner has since moved for appointment of counsel and for an order holding the matter in abeyance while petitioner seeks leave of the Court of Appeals. Dkt. nos. 8 and 9. These motions shall be denied and the matter shall be dismissed without prejudice. Petitioner has not shown good cause for granting his requests. He did not support his motion to hold this matter in abeyance with a copy of a petition for leave to file a successive petition which had been or would be filed with the Court of Appeals and he did not give any indication that such a motion had been filed. Thus, to grant his

1 motion and offer an open-ended stay of these proceedings would not be a good use of
2 judicial resources and would merely serve to clutter the Court's docket. Moreover,
3 dismissal of the action without prejudice will do petitioner no harm. If he is ultimately
4 able to obtain leave of the appellate court to file his successive petition, he can refile his
5 petition in a new action. If he lacks funds to pay the filing fee at that time, he may move
6 for leave to proceed in *forma pauperis*.

7 Moreover, since this action is to be dismissed, the appointment of counsel would
8 be inappropriate and ineffective.


9 It is therefore ordered that the motion for appointment of counsel (dkt. no. 8) is
10 denied.

11 It is further ordered that the motion to hold Order (dtk. No. 6) in Abeyance (dkt.
12 no. 9) is denied. This action is dismissed without prejudice. No certificate of
13 appealability shall issue as jurists of reason would not find this procedural decision
14 debatable.

15 It is further ordered that the Clerk shall send petitioner a copy of the petition filed
16 in this action and shall enter judgment accordingly.

17 DATED THIS 17th day of October 2013.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE